

REMARKS

Applicants appreciate the Examiner's withdrawal of the previous prior art rejections. Applicants have carefully examined the newly cited references and have amended independent Claims 1, 24, 40, and 41 for clarification to include subject matter similar to that formerly recited in Claim 13, and claim 13 has been cancelled without prejudice or disclaimer. Applicants request reconsideration and allowance in view of the above amendments and the following remarks.

Status of the Claims:

Claims 1, 3-5, 7, 17, 21-24, 26-28, 31-34, 37, 38, 40, and 41 stand rejected under 35 U.S.C. 102(b) as anticipated by U.S. Pat. Publ. No. 2002/0046284 to Brabson et al. ("Brabson"). Claims 8-10 and 12 stand rejected under 35 U.S.C. 103(a) as unpatentable over Brabson in view of U.S. Pat. Publ. No. 2003/0152028 to Raisanen et al. ("Raisanen"). Claim 11 stands rejected under 35 U.S.C. 103(a) as unpatentable over Brabson in view of U.S. Pat. No. 6,628,610 to Waclawsky et al. ("Waclawsky"). Claims 13-16 stand rejected under 35 U.S.C. 103(a) as unpatentable over Brabson in view of U.S. Pat. No. 6,643,266 to Pugaczewski et al. ("Pugaczewski"). Claims 18-20 stand rejected under 35 U.S.C. 103(a) as unpatentable over Brabson in view of U.S. Pat. Publ. No. 2004/0095914 to Katsube et al. ("Katsube"). Claim 29 stands rejected under 35 U.S.C. 103(a) as unpatentable over Brabson in view of U.S. Pat. No. 6,999,474 to Goyal et al. ("Goyal").

Independent Claims 1, 24, 34, 40, and 41 are Patentable over Brabson in view of Pugaczewski:

Independent Claim 1 has been amended based on the subject matter of Claim 13 (now canceled) to recite, inter alia, with numbering added for ease of reference:

- 1) allocating levels of network communication QoS to individual ones of the applications of the service provider in response to the QoS requests,
- 2) by evaluating at a network service manager of the communication network the QoS that is available in the communication network,

3) and by allocating from the network service manager a level of network communication QoS to a particular one of the applications of the service provider in response to a QoS request for the particular application and the evaluation of the QoS available in the communication network; and

4) managing, at the network service manager, network communication QoS that is provided by the communication network to network communications from the individual applications of the service provider in response to the network communication QoS levels allocated to the respective individual applications, wherein the communication network comprises a wide area network.

In sharp contrast, Brabson discloses that a client/server system manages QoS for communication requests from applications that are *hosted on that client system and/or server system*. In particular, Brabson describes regarding to Figure 3 (annotated below) that "a data processing system 305 such as a client or a server ... is receiving communication requests which result in outgoing communications initiated by an application executing thereon".
(Brabson, paragraph 39, emphasis added)

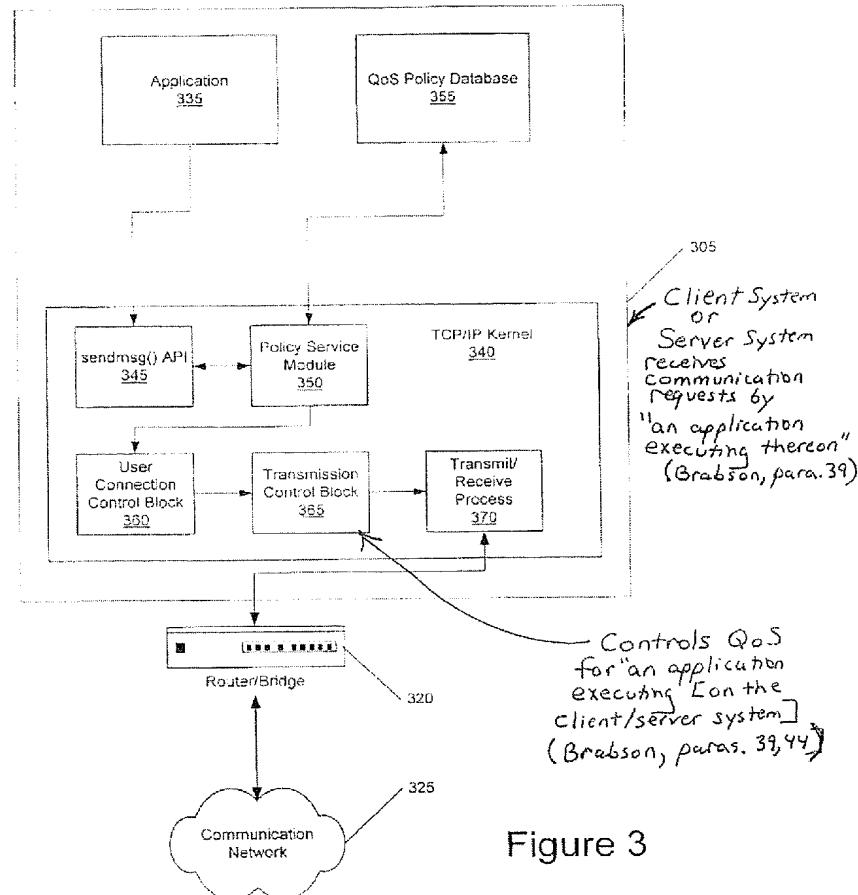


Figure 3

Brabson further describes that the application 335 uses a `sendmsg()` API 345 to specify a QoS that is to be used for communicating data over the communication network 325. (Brabson, para. 41). The transmission control block 365 "specifies the QOS of the transmission and is used by the transmit/receive process 370 to establish transmission parameters for the data transmission, allocate data processing system resources and/or incorporate a QoS token or other such specification in the header or other such un-encrypted portion of the transmission so that subsequent network nodes need not evaluate the data content of the message." (Brabson, para. 44).

Applicants emphasize that the transmission control block 365 is within the same client/server system 305 that is executing the application 335, so that the client/server system 305 is responsible for not only allocating QoS to the application 335, but is also responsible for managing communications by the application 335 according to the allocated QoS.

Consequently, Brabson discloses that the client/server system 305 allocates and manages network communication QoS for applications that are hosted on the client/server system 305. Brabson does not disclose or suggest that the communication network 325 carries out either the allocation function or the management function. Indeed, Applicants note that Brabson does not disclose or suggest any of the dependent Claims 8-16 (which is conceded by the Office Action on pages 7-9) that define particular functionality that is carried out by the communication network to manage the network communication QoS that is provided by the communication network to a particular application. Brabson does not disclose any such functionality for the communication network 325 because, for example, Brabson envisioned that the client/server system 305 was solely responsible for allocating and managing QoS for the application 335 executing thereon.

Consequently, Brabson does not describe or suggest any of the following:

- 1) *that the communication network 325 allocates a level of network communication QoS to the application 335 in response to a QoS request from the client/server system 305;*
- 2) *that the communication network 325 allocates network communication QoS to the application 335 by evaluating the QoS that is available in the communication network 325;*
- 3) *that the communication network 325 allocates network communication QoS to the application 335 in response to a QoS request for the particular application and the evaluation of the QoS available in the communication network; and*
- 4) *that the communication network 325 manages network communication QoS that it provides to the application 335 in response to the allocated network communication QoS.*

In rejecting Claim 13, now incorporated into Claim 1, the Office Action has cited Pugaczewski's column 4, lines 22-41 below:

The advantages associated with embodiments of the present invention are numerous. For example, embodiments of the present invention perform a loop qualification initiated by the customer side. Advantageously, embodiments of the present invention may be achieved using a 56 kbps modem (having the appropriate transmitting and receiving capabilities) or DSL modem having appropriate hardware capabilities and an appropriate device driver. In accordance with the present invention, the customer may initiate a loop qualification test and obtain a test result for the local loop. Depending upon the local loop and the termination in the central office, the measure of returned frequency and decibel (dB) value would help determine the line's ability to support DSL service. It is appreciated that embodiments of the present invention may take the form of a computer program. In some

implementations, the computer program may be a miniprogram such as a JAVA applet or ACTIVEX program that may be downloaded over the Internet and then executed at the customer side. In the alternative, the computer program may be a stand-alone executable, possibly distributed on CD ROM.

The cited section of Pugaczewski describes a loop qualification process for testing modems communication rates. In neither the cited section nor elsewhere does Pugaczewski describe or suggest any of the four above-enumerated features of amended Claim 1 that are missing from Brabson's teachings.

Because many recitations of amended Claim 1 are not disclosed by the combination of Brabson and Pugaczewski, Applicants submit that Claim 1 is patentable over Brabson in view of Pugaczewski and, therefore, is in condition for allowance.

Independent Claims 24, 34, 40, and 41 include similar recitations to amended Claim 1 and, therefore, are submitted to be patentable over Brabson in view of Pugaczewski for at least the reasons explained for amended Claim 1.

Reconsideration and allowance of independent Claims 1, 24, 34, 40, and 41 is therefore requested.

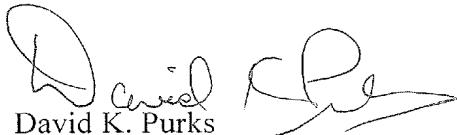
The dependent claims are patentable at least based on their dependence from a patentable independent claim, and Applicants traverse the rejection of the dependent claims. However, as each of these claims depends from a base claim that is believed to be in condition for allowance, Applicant does not believe that it is necessary to argue the allowability of each dependent claim individually. Applicant does not necessarily concur with the interpretation of these claims, nor with the bases for rejection set forth in the Office Action. Applicant therefore reserves the right to address the patentability of these claims individually as necessary in the future.

CONCLUSION

In view of the above amendments and remarks, Applicants respectfully request withdrawal of all objections and rejections and the allowance of all claims in due course. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is encouraged to contact the undersigned by telephone at (919) 854-1400.

In re: Adamczyk et al.
Serial No.: 10/719,270
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Respectfully submitted,


David K. Purks
Registration No. 40,133
Attorney for Applicants

Customer Number 39072
AT&T Legal Department
ATTN: Patent Docketing
Room 2A-207
One AT&T Way
Bedminster, NJ 07921

CERTIFICATION OF TRANSMISSION

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Susan E. Freedman
Date of Signature: December 10, 2008